

IN THE TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, TENNESSEE

IN RE: LOCAL RULES

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NO. \_\_\_\_\_

**PROPOSED LOCAL RULE AMENDMENTS**

Pursuant to the statutory powers invested in the Presiding Judge and with the concurrence of the judges and chancellors, the Local Rules are amended and adopted effective June 1, 2005, subject to the provisions of Supreme Court Rule 18.

**1. Amendments To Existing Rules**

**A. §27.04**

§27.04 presently states:

**§27.04 Workers' Compensation Benefit Review Conference**

All worker's compensation cases shall be referred for a benefit review conference. See Tenn. Code Ann. §§50-6-237 and 50-6-239(a). No workers' compensation case shall be set for trial unless the parties certify to the Court that the benefit review conference process has been completed or is not necessary pursuant to Tenn. Code Ann. §50-6-239(c).

IT IS AMENDED TO STATE (amendment indicated):

**§27.04 Workers' Compensation Benefit Review Conference**

All worker's compensation cases shall be referred for a benefit review conference. See Tenn. Code Ann. §§50-6-237 and 50-6-239(a). No workers' compensation case shall be set for trial unless the parties certify to the Court that the benefit review conference process has been completed or is not necessary pursuant to Tenn. Code Ann. §50-6-239(c). This rule does not apply to accidents or injuries occurring after January 1, 2005 as Tenn. Code Ann. §50-6-203(a) will apply.

**B. §29.01**

§29.01 presently states:

**§29.01 Required Exchange of Witnesses and Documents**

At least seventy-two (72) hours (excluding weekends and holidays) before the trial of a case, opposing counsel shall either meet face-to-face or shall hold a telephone conference for the following purposes:

- a. to exchange names of witnesses, including anticipated impeachment or rebuttal witness; and
- b. to make available for viewing and to discuss proposed exhibits.

In the event that the parties hold a telephone conference rather than a face-to-face meeting, the exhibits shall be made available for viewing before the conference.

IT IS AMENDED TO STATE (amendment indicated):

**§29.01 Required Exchange of Witnesses and Documents**

At least seventy-two (72) hours (excluding weekends and holidays) before the trial of a case, opposing counsel shall either meet face-to-face or shall hold a telephone conference for the following purposes:

- a. to exchange names of witnesses, including addresses and home and business telephone numbers (if not included in interrogatory answers), including anticipated impeachment or rebuttal witness; and
- b. to make available for viewing and to discuss proposed exhibits.

In the event that the parties hold a telephone conference rather than a face-to-face meeting, the exhibits shall be made available for viewing before the conference.

**C. §29.02**

§29.02 presently states:

**§29.02 Notice Of Intent To Use Audio/Visual Recording Is Required**

When a party intends to offer an audio and/or visual recording as evidence in a jury trial, counsel must provide written notice to all adverse counsel at least ten (10) days before a trial. Adverse counsel shall be permitted to review the recording in the form to be offered at trial and shall be allowed to copy the recording at his or her expense. Adverse counsel shall promptly advise the other attorney of each objection to the recording. The lawyers shall then attempt in good faith to resolve objections. If no resolution is reached, a

motion in limine shall be filed and set sufficiently before trial so that the objections may be ruled on in time to allow any necessary editing.

IT IS AMENDED TO STATE (amendments indicated):

**§29.02 Notice Of Intent To Use Audio/Visual Recording or Animation Is Required**

When a party intends to ~~offer~~ utilize an audio and/or visual recording as ~~evidence~~ or animation in a jury trial, counsel must provide written notice to all adverse counsel at least ten (10) days before a trial. Adverse counsel shall be permitted to review the recording or animation in the form to be offered at trial and shall be allowed to copy the recording at his or her expense. Adverse counsel shall promptly advise the other attorney of each objection to the recording. The lawyers shall then attempt in good faith to resolve objections. If no resolution is reached, a motion in limine shall be filed and set sufficiently before trial so that the objections may be ruled on in time to allow any necessary editing.

**D. §5.04**

§5.04 on conduct of counsel presently incorporates the standards of Intra-Professional Conduct. That provision will be deleted and replaced by the NBA Lawyer's Creed of Professionalism, which was recently adopted by the Nashville Bar Association. The full text of the lawyer's creed can be found at [www.nashbar.org](http://www.nashbar.org).

**E. §33.04**

§33.04 presently states:

**§33.04 Default Judgment Order With Certificate**

All orders granting default judgment on claims involving liquidated amounts shall be accompanied by a certificate. [See Appendix of Forms for sample].

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**APPENDIX OF FORMS  
DEFAULT JUDGMENT CERTIFICATE**

Plaintiff, by counsel, certifies that:

1. No papers have been served on plaintiff's counsel by the defendant(s) in default.

2. Defendant(s) were served on

3. The balance due is as follows:

(a) Total amount of the original obligation \$

(b) Amount paid by defendant(s) to be deducted from the original obligation is \$

(c) Amount of any interest requested \$

(d) Amount of attorney fees requested \$

(e) Balance due is \$

(f) If the balance due above is different from the amount sought in the default judgment, the reason is:

\_\_\_\_\_

(g) If the basis of the claim is a promissory note, the original has been filed. If not, the reason is:

\_\_\_\_\_

IT IS RENUMBERED AND AMENDED TO STATE:

**§26.15 Default Judgement Motion with Certificate**

All motions for default judgment seeking a judgment for liquidated damages shall specifically state the amount sought and be accompanied by a certificate which shall substantially comply with the default judgment certificate in the appendix. A request for non-liquidated damages will require a damages hearing.

[This renumbering of current section §33.04 will require current §33.05 to also be renumbered to (new) §33.04.]

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## APPENDIX OF FORMS

### ***DEFAULT JUDGMENT CERTIFICATE***

Plaintiff, by counsel, certifies that:

1. No papers have been served on plaintiff s counsel by the defendant(s) in default.

2. Defendant(s) were served on

3. The amount due is as follows:

(a) Total amount of the original obligation \$

(b) Amount paid by defendant(s) to be deducted from the original obligation is \$

(c) Amount of any interest requested \$

(d) Amount of attorney fees requested \$

(e) Balance due is \$

(f) If the balance due above is different from the amount sought in the default judgment, the reason is:

(g) If the basis of the claim is a promissory note, contract, or account, the original or a copy has been filed. If not, please attach, or explain the absence.

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(h) If attorney fees are requested state the basis for the fee obligation and attach documentation if not already in record.

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(i) If attorney fees are requested, attach attorney affidavit specific enough to allow the judge or chancellor to set the fee in compliance with RPC 1.5(a).

#### **F. §26.09**

§26.09 presently states:

## **§26.09 Striking or Postponement of Motions**

After a motion has been docketed, no party may strike or postpone a motion without the agreement of all parties. If a motion is to be stricken or postponed by agreement, counsel shall notify the Calendar Clerk of the assigned court as soon as practicable. If the parties do not agree to postpone a motion, the court may hear a motion to postpone prior to the hearing of the regular motion. If any party strikes or postpones a motion without agreement of all parties of record or without leave of court, the court may tax, as costs, reasonable fees and expenses in favor of any party who appeared at the scheduled hearing.

IT IS AMENDED TO STATE (amendments indicated):

## **§26.09 Striking or Postponement of Motions**

After a motion has been docketed, ~~no party~~ the movant may strike or postpone a motion ~~without the agreement of all parties~~ upon timely notice to all parties. If a motion is to be stricken or postponed by agreement, counsel shall timely notify the Calendar Clerk of the assigned court ~~as soon as practicable~~. ~~If the parties do not agree to postpone a motion, the court may hear a motion to postpone prior to the hearing of the regular motion.~~ If any party strikes or postpones a motion ~~without agreement of all parties of record or without leave of court,~~ without giving notice the court may tax, as costs, reasonable fees and expenses in favor of any party who appeared at the scheduled hearing.

### **G. § 30(c)**

§30(c) on motions related to audio or visual recording is amended to include “audio and/or visual recording or animation” to reflect the amendment to §29.02.

## **2. New Rules**

### **A. § 28.05 Subpoenas For Medical Records.**

All subpoenas issued by the Clerk or Clerk and Master for medical records shall reflect compliance with the Health Insurance Portability and Accountability Act (H.I.P.A.A.). See 45 C.F.R. § 164.512(e). The Clerk of Court or Clerk and Master shall not issue a subpoena pursuant to T.R.C.P. 45.02 for medical records unless the subpoena form includes the following:

**HIPAA NOTICE**

A copy of this subpoena has been provided to counsel for the patient or the patient by mail or facsimile on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ so as to allow him/her seven (7) days to:

(A) serve the recipient of the subpoena by facsimile with a written objection to the subpoena, with a copy of the notice by facsimile to the party that served the subpoena, and

(B) simultaneously file and serve a motion for a protective order consistent with the requirements of T.R.C.P. 26.03, 26.07 and Local Rule § 22.10.

If no objection is made within seven (7) days of the above date, you shall process this subpoena and produce the documents by the date and time specified in the subpoena. The signature of counsel or party on the subpoena is certification that the above notice was provided to the patient.

**B. Addition of a new subsection (c) to §26.04**

(c). When requesting leave to amend a pleading, the moving party must attach a copy of the proposed amended pleading to the motion so that it becomes part of the record. [Comment: Unless the record before the appellate court shows the substance of the proposed amendment, it cannot determine whether the court acted properly on the motion. *Taylor v. Nashville Banner Publ'g Co.*, 573 S.W.2d 476 (Tenn. Ct. App. 1978).]

[This addition will require moving the current subsections to §26.04 backward one letter, starting with current subsection (d). For example, current §26.04(d) will be re-lettered "§26.04(e)".]

The Chair of the Local Rules Committee shall cause these proposed rule amendments to be published and filed for comment consistent with Supreme Court Rule 18. Comments should be sent by April 18, 2005 to Judge Walter Kurtz, Chair, Local Rules Committee, 509 Metro Courthouse, Nashville, TN 37201.

This the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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PRESIDING JUDGE

cc: Richard R. Rooker  
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506 Metro Courthouse  
Nashville, TN 37201

**VIA HAND DELIVERY**

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